COURT OF APPEALS
DECISION
DATED AND FILED

June 17, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP232 **Cir. Ct. No. 2005FA561**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN RE THE MARRIAGE OF:

CHRISTINE A. GORMAN,

PETITIONER-RESPONDENT,

V.

JOHN K. GORMAN,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Walworth County: JOHN R. RACE, Judge. *Affirmed*.

Before Anderson, P.J., Snyder and Neubauer, JJ.

¶1 PER CURIAM. John K. Gorman has appealed pro se from an order modifying the physical placement of one of his sons and modifying child support. We affirm the trial court's order.

¶2 A judgment of divorce was entered in this case on July 25, 2006. In the judgment, the trial court approved the parties' marital settlement agreement. Among other things, the agreement and judgment provided that John would pay $55.25 per week for the support of the parties' two sons and provided for shared physical placement of the children. John was unemployed at the time of the divorce. John's child support was based on an imputed monthly income of $2655 and placement time of 43% to John and 57% to Christine Gorman.

¶3 On June 12, 2007, Christine filed a motion to modify the physical placement of the parties' seventeen-year-old son, Charlie, pursuant to WIS. STAT. § 767.451(2) and (2m) (2007-08).[1] She also moved to modify child support pursuant to WIS. STAT. § 767.59. A guardian ad litem was appointed and an evidentiary hearing was held. Based on the evidence and the recommendation of the guardian ad litem, the trial court granted Christine's motion and awarded primary physical placement of Charlie to her. Based on John's current employment and the change in placement, the trial court also modified child support, ordering John to pay $975.50 per month, retroactive to June 12, 2007.

¶4 When parties have substantially equal periods of physical placement pursuant to a court order, a trial court may modify the order if circumstances make it impractical for the parties to continue to have substantially equal placement, and it is in the best interest of the child. WIS. STAT. § 767.451(2)(a). In modifying placement of Charlie, the trial court found that Charlie was a "good kid" and a "normal" seventeen-and-one-half years old. It found that he had had a terrible relationship with John since he was thirteen and had never visited John in

[1] All references to the Wisconsin Statutes are to the 2007-08 version.

accordance with the 2006 marital settlement agreement and divorce judgment. It found that John had "palpable" anger issues, which were demonstrated in the court proceedings, and were sensed by Charlie. It declined to impute fault to Charlie for his unwillingness to visit John and concluded that trying to enforce visitation at this stage would be futile.

¶5 The trial court expressly found under WIS. STAT. § 767.451(2)(a) that it was no longer practical to maintain the previously ordered placement schedule for Charlie and that the requirements for modification under § 767.451(2)(a) were met. It therefore awarded primary physical placement of Charlie to Christine, stating that John would have periods of placement at reasonable times and upon reasonable notice, but that placement with John would not be enforced if Charlie did not want to visit him.

¶6 Modification of a physical placement order is directed to the trial court's discretion. ***Keller v. Keller***, 2002 WI App 161, ¶6, 256 Wis. 2d 401, 647 N.W.2d 426. This court will affirm the trial court's discretionary determination if it applied the correct legal standard to the facts of record and reached a reasonable result. ***Id.***

¶7 The trial court's findings of fact will be disturbed only if they are clearly erroneous. ***Greene v. Hahn***, 2004 WI App 214, ¶9, 277 Wis. 2d 473, 689 N.W.2d 657. In reviewing findings made by a trial court:

> It is well settled that the weight of the testimony and the credibility of the witnesses are matters peculiarly within the province of the trial court acting as the trier of fact. The reason for such deference is the superior opportunity of the trial court to observe the demeanor of witnesses and to gauge the persuasiveness of their testimony.

Kleinstick v. Daleiden, 71 Wis. 2d 432, 442, 238 N.W.2d 714 (1976) (footnote omitted). "The opportunity of the trier of fact to observe the demeanor of a witness confers depth and meaning to testimony." ***Green v. State***, 75 Wis. 2d 631, 640, 250 N.W.2d 305 (1977). Moreover, when more than one reasonable inference can be drawn from the credible evidence, this court must accept the inference drawn by the trial court. ***Noll v. Dimiceli's, Inc.***, 115 Wis. 2d 641, 644, 340 N.W.2d 575 (Ct. App. 1983).

¶8 On appeal, John establishes no basis to disturb the trial court's placement order. The record, including the testimony at the evidentiary hearing, supports the trial court's findings as to the nature of the relationship between John and Charlie, and its finding that John has palpable anger issues. Based upon these findings and Charlie's age at the time of the hearing, the trial court reasonably concluded that it was no longer practical to require shared physical placement or to require Charlie to visit John if he was opposed to doing so.[2] It also reasonably determined that modifying the placement schedule was in Charlie's best interest. Because the trial court's findings are not clearly erroneous and its conclusions are reasonable, no basis exists to conclude that it acted outside the scope of its discretion in modifying the placement arrangement. *See* WIS. STAT. § 767.451(2)(a).

¶9 John also fails to demonstrate a basis to disturb the portion of the trial court's order modifying child support. This court reviews a trial court order

[2] In upholding the trial court's order, we also take note of the representation in Christine's respondent's brief, indicating that Charlie had already turned eighteen and graduated from high school in May 2008. As an adult, Charlie is clearly no longer subject to a child placement order.

regarding child support under an erroneous exercise of discretion standard. ***Franke v. Franke***, 2004 WI 8, ¶72, 268 Wis. 2d 360, 674 N.W.2d 832. Modification of child support is permissible upon a finding of a substantial change in the circumstances of the parties. ***Id.***, ¶73; WIS. STAT. § 767.59(1f)(a). The determination of whether there has been a substantial change of circumstances sufficient to warrant a modification of child support presents a mixed question of fact and law. ***Benn v. Benn***, 230 Wis. 2d 301, 307, 602 N.W.2d 65 (Ct. App. 1999). The trial court's findings of fact regarding the changes that have occurred in the circumstances of the parties will not be disturbed unless they are clearly erroneous. ***Id.*** The question of whether a change is substantial is a question of law that is reviewed de novo by this court. ***Id.***

¶10 The record reveals that John was unemployed at the time the divorce was granted and child support was set after imputing income to him of $2655 per month, derived from his previous average earnings. However, at the December 11, 2007 hearing, John testified that he had been employed full-time for the Bechtel Corporation for approximately six months, earning $29 per hour while working at the Oak Creek power plant. Because this constitutes $5030 per month, or approximately $60,000 per annum, the trial court's finding that a substantial change in circumstances had occurred is not clearly erroneous.[3] *See* WIS. STAT.

[3] In his appellant's brief and at the evidentiary hearing, John referred to unpaid days off based on things like bad weather and holidays. However, he failed to present any meaningful evidence on this subject. His allegations alone are insufficient to permit this court to conclude that the trial court made an erroneous finding as to his current income.

John's brief is unclear, but it appears he may also be alleging that he was laid off after entry of the order modifying child support. However, even if true, it does not affect this appeal, which is an appeal from the final order entered on January 9, 2008, and brings before this court only issues presented to the trial court and decided by it before that date. *See* WIS. STAT. RULE 809.10(4).

§ 767.59(1f)(c)1. As provided in § 767.59(2)(a), the new child support amount was calculated in accordance with the modified placement schedule and the child support standards established under WIS. STAT. § 49.22(9) and WIS. ADMIN. CODE §§ DCF 150.03(1) and 150.04(2) (Nov. 2008),[4] taking into account both parties' incomes. No basis therefore exists to conclude that the trial court erroneously exercised its discretion in modifying child support.

¶11 As a final matter, John objects to paying mileage for the guardian ad litem. However, he does not cite to any portion of the record establishing what he was required to pay, why it was unreasonable, or that he timely sought relief in the trial court. This court will decline to review issues which are inadequately briefed. ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[4] WISCONSIN ADMIN. CODE § DWD 40 recently was renumbered to WIS. ADMIN. CODE § DCF 150 but was not substantively altered. We cite to it as currently numbered.